DOCUMENT RESUME

ED 411 919 JC 970 531

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TITLE	Campus Police/Media Relations.
PUB DATE	1997-10-16
NOTE	21p.; Paper presented at the California College and University Police Chiefs Association Fall Conference (October 16, 1997).
PUB TYPE	Information Analyses (070) -- Speeches/Meeting Papers (150)
EDRS PRICE	MF01/PC01 Plus Postage.
DESCRIPTORS	Community Colleges; *Confidentiality; *Court Litigation; Criminal Law; *Higher Education; Law Enforcement; News Media; *Police; *Privacy; State Legislation
IDENTIFIERS	*California; Department of Education; Family Educational Rights and Privacy Act 1974

ABSTRACT

California state statutes and a series of court cases have required campus security and police departments to release information about incidents occurring on campus to the media and the general public. Despite the law and case decisions, recent studies reveal campus police and security officials are still reluctant to release information to the media because of the interest of the security/police officials to protect the privacy of campus students and employees versus the right of the public, including the media, to have access to incidents occuring on campus. The courts and the Department of Education have clearly identified the difference between "education" records and "law enforcement" records. The Federal "Family Educational Rights and Privacy Act" (FERPA) prevents release of a student's educational record beyond "directory" information. Criminal investigation and incident reports do not apply under this law. This paper reviews the laws and court decisions regarding release of crime information to the media. A general overview of California law regarding release of campus information the media is as follows: (1) law enforcement shall release general information to the media, including time, nature, and factual circumstances of incident, name and age of the victim, and a description of the arrest; (2) law enforcement shall not release information that would endanger the safety of the investigation, victim or witness information, information relating to juveniles, and identity of persons reporting child abuse; and (3) law enforcement may release victim information with the victim's permission, and the public safety officer under investigation with the officer's permission. (YKH)

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CAMPUS POLICE/MEDIA RELATIONS

Philip Mullendore, D. Crim. Director, Police and Safety, Pasadena City College, Pasadena California. A paper presented at the California College and University Police Chiefs Association Fall Conference October 16, 1997

THE DILEMMA

California state statutes and a series of court cases have required campus security and police departments to release information about incidents occurring on campus to the media and the general public. The United States Supreme Court has stated "Public records by their very nature are of interest to those concerned with the administration of government and a public benefit is performed by the reporting of the true contents of the records by the media. The freedom of the press to publish that information appears to us to be of critical importance to our type of government in which citizenry is the final judge of the proper conduct of public business. (Nebraska Press Assoc. v. Stewart, 427 U.S. 539, 96 S.Ct. 2791 49 L.Ed.2d 683 (1976).

Yet, despite the law and case decisions recent studies reveal campus police and security officials are still reluctant to release information to the media. The Federal Educational Rights and Privacy Act (FERPA) or better known as the Buckley amendment is usually cited as the reason for withholding information from the media. A study conducted by Tom Dickson, Ivan Holmes and Liz Naden, Southwest Missouri State University found there was a need to educate campus administrators and campus police/security officials about the right that student newspapers have to publish such information and other information that does not put the institution in a good light.

The issue, is the need of security/police officials to protect the privacy of campus students and employees versus the right of the public, including the media, to have access to incidents occurring on campus. Campus security/police officials when in doubt, don't release the information.

The purpose of this paper is to review the laws and court decisions regarding release of crime information to the media.

THE LAW
FEDERAL STATUTES

Campus Security Act (1990)

Enacted in 1990, the Campus Security Act requires that colleges and universities which receive Federal funds release their security policies and the three most recent years of campus crime statistics for..

Murder
Sex Offenses (forcible/non-forcible)
Robbery
Aggravated Assault
Burglary
Motor Vehicle Theft
Also requires that schools provide statistics for the following categories of arrests...

Liquor Law Violations
Drug Abuse Violations
Weapons Possessions

Campus Sexual Assault Victims' Bill of Rights (1992)

The security policies released pursuant to the Campus Security Act shall specifically address sex offense prevention and include the following provisions in cases of alleged sexual assault

- Accuser and accused must have the same opportunity to have others present.
- Both parties shall be informed of the outcome of any disciplinary proceeding.
- Survivors shall be informed of their options to notify law enforcement.
- Survivors shall be notified of counseling services.
- Survivors shall be notified of options for changing academic and living situations.

Title II of Public Law 101-542The Student Right-To-Know and Campus Security Act of 1990, enacted by Congress and signed into law on November 8,1990 amended section 485 of the Higher Education Act of 1965by adding campus crime statistic and security reporting provisions for colleges and universities. The security provisions were amended in 1992 by The Campus Sexual Assault Victims' Bill of Rights to require that schools develop policies to deal with sexual assault on campus and provide certain assurances to victims

These provisions apply to all institutions of higher education, both public and private, nationwide which participate in any of the funding programs authorized by the Higher Education Act. The United States Department of Education is charged with enforcing the provisions of this statute.

Under the provisions of this Act all prospective students and employees are entitled to a copy of a school's crime statistics for the three most recent calendar years and security policies. Current students and employees are to be provided this information automatically. The Student Press Law Center maintains a page dedicated to providing student journalists with information on how they can use the Campus Security Act to better report on campus crime.

The complete text of the law as amended in 1992 follows.

Campus Security and Crime Awareness Act

20 U.S.C. Section 1092

Disclosure of campus security policy and campus crime statistics. Each eligible institution participating in any program under this title shall on August 1, 1991, begin to collect the following information with respect to campus crime statistics and campus security policies of that institution, and beginning September 1, 1992, and each year thereafter, prepare, publish, and distribute, through appropriate publications or mailings, to all current students and employees, and to any applicant for enrollment or employment upon request, an annual security report containing at least the following information with respect to the campus security policies and campus crime statistics of that institution:

(A)statement of current campus policies regarding procedures and facilities for students and others to report criminal actions or other emergencies occurring on campus and policies concerning the institution's response to such reports.
(B)A statement of current policies concerning security and access to campus facilities, including campus residences, and security considerations used in the maintenance of campus facilities.
(C) A statement of current policies concerning campus law enforcement, including

(i) the enforcement authority of security personnel, including their working relationship with State and local police agencies; and (ii) policies which encourage accurate and prompt reporting of all crimes to the campus police and the appropriate police agencies.

(D) A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage students and employees to be responsible for their own security and the security of others.
(E) A description of programs designed to inform students and employees about the prevention of crimes.
(F) Statistics concerning the occurrence on campus, during the most recent calendar year, and during the 2 preceding calendar years for which data are available, of the following criminal offenses reported to campus security authorities or local police agencies -

(i) murder;
(ii) sex offenses, forcible or non-forcible;
(iii) robbery;
(iv) aggravated assault;
(v) burglary; and
(vi) motor vehicle theft.

(G) A statement of policy concerning the monitoring and recording through local police agencies of criminal activity at off-campus student organizations which are recognized by the institution and that are engaged in by students attending the institution, including those student organizations with off-campus housing facilities.

(H) Statistics concerning the number of arrests for the following crimes occurring on campus:

(i) liquor law violations;
(ii) drug abuse violations; and
(iii) weapons possessions.

(I)

A statement of policy regarding the possession, use, and sale of alcoholic beverages and enforcement of State underage drinking laws and a statement of policy regarding the possession, use, and sale of illegal drugs and enforcement of Federal and State

drug laws and a description of any drug or alcohol abuse education programs as required under section 1145g of this title.

(I)

(2) Nothing in this subsection shall be construed to authorize the Secretary to require particular policies, procedures, or practices by institutions of higher education with respect to campus crimes or campus security.

(3) Each institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42 shall make timely reports to the campus community on crimes considered to be a threat to other students and employees described in paragraph (1)(F) that are reported to campus security or local law police agencies. Such reports shall be provided to students and employees in a manner that is timely and that will aid in the prevention of similar occurrences.

(4) Upon the request of the Secretary, each institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42 shall submit to the Secretary a copy of the statistics required to be made available under paragraphs (1)(F) and (1)(H). The Secretary shall
(A) review such statistics and report to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate on campus crime statistics by September 1, 1995; and
(B) in coordination with representatives of institutions of higher education, identify exemplary campus security policies, procedures, and practices and disseminate information concerning those policies, procedures, and practices that have proven effective in the reduction of campus crime.

(5)(A) For purposes of this subsection, the term "campus" includes -

(i) any building or property owned or controlled by the institution of higher education within the same reasonably contiguous geographic area and used by the institution in direct support of, or related to its educational purposes; or
(ii) any building or property owned or controlled by student organizations recognized by the institution.

(B) In cases where branch campuses of an institution of higher education, schools within an institution of higher education, or administrative divisions within an institution are not within a reasonably contiguous geographic area, such entities shall be considered separate campuses for purposes of the reporting requirements of this section.
(6) The statistics described in paragraphs (1)(F) and (1)(H) shall be compiled in accordance with the definitions used in the uniform crime reporting system of the Department of Justice, Federal Bureau of Investigation, and the modifications in such definitions as implemented pursuant to the Hate Crime Statistics Act.

(7)(A) Each institution of higher education participating in any program under this subchapter and part C of subchapter I of chapter 34 of title 42 shall develop and distribute as part of the report described in paragraph
(1) a statement of policy regarding -

(i) such institution's campus sexual assault programs, which shall be aimed at prevention of sex offenses; and
(ii) the procedures followed once a sex offense has occurred.

(B) The policy described in subparagraph (A) shall address the following areas:

(i) Education programs to promote the awareness of rape, acquaintance rape, and other sex offenses.
(ii) Possible sanctions to be imposed following the final determination of an on-campus disciplinary procedure regarding rape, acquaintance rape, or other sex offenses, forcible or non-forcible.
(iii) Procedures students should follow if a sex offense occurs, including who should be contacted, the importance of preserving evidence as may be necessary to the proof of criminal sexual assault, and to whom the alleged offense should be reported.
(iv) Procedures for on-campus disciplinary action in cases of alleged sexual assault, which shall include a clear statement that -

(I) the accuser and the accused are entitled to the same opportunities to have others present during a campus disciplinary proceeding; and
(II) both the accuser and the accused shall be informed of the outcome of any campus disciplinary proceeding brought alleging a sexual assault.

(v) Informing students of their options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the student so chooses.
(vi) Notification of students of existing counseling, mental health or student services for victims of sexual assault, both on campus and in the community.
(vii) Notification of students of options for, and available assistance in, changing academic and living situations after an alleged sexual assault incident, if so requested by the victim and if such changes are reasonably available.

(c) Nothing in this paragraph shall be construed to confer a private right of action upon any person to enforce the provisions of this paragraph.

Regulations

Section 401(a) of Pub. L. 101-542 provided that: "The Secretary is authorized to issue regulations to carry out the provisions of this Act (amending this section and sections 1085, 1094, and 1232g of this title and enacting provisions set out as notes under this section and section 1001 of this title)." These regulations can be found in the Code of Federal Regulations at 34 CFR Sec. 668.47Institutional security policies and crime statistics.

Since the final regulations were issued the Department of Education has issued a Dear Colleague letter dated May 1996 which addresses Federal privacy law (FERPA) as it relates to the reporting of crime statistics, crimes handled by on-campus disciplinary proceedings and the method to file a complaint alleging non-compliance with the Act.

Campus Sexual Assault Victims' Bill of Rights (1992)

The security policies released pursuant to the Campus Security Act shall specifically address sex offense prevention and include the following provisions in cases of alleged sexual assault

1. Accuser and accused must have the same opportunity to have others present.
2. Both parties shall be informed of the outcome of any disciplinary proceeding.
3. Survivors shall be informed of their options to notify law enforcement.
4. Survivors shall be notified of counseling services.
5. Survivors shall be notified of options for changing academic and living situations.

FERPA

The Federal "Family Educational Rights and Privacy Act" (F.E.R.P.A.) which is also known as the "Buckley Amendment" (20 U.S.C. sec.1232g(a)(4)(A)) was enacted in 1974 to protect the confidentiality of academic records such as grade reports and financial aid data. K-12, college and university law enforcement records were exempt unless they were shared with other campus offices such as a disciplinary committee. Schools were able to use this as a loophole to state open records laws and restricted access to their campus security and police records.

Congress changed the law in 1992 to open access to campus law enforcement records, but not to disciplinary proceedings involving criminal allegations. A recent study however concluded that F.E.R.P.A. "is still being used extensively to deny student newspapers access to campus security records" (SMSU, 12/94). types of institutions of higher education.

F.E.R.P.A. prohibits the release of educational records except with the permission of the student. The institution can release "directory" information without the student's permission. Directory information includes the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student. FERPA protects as confidential, information, information which a student is required to produce or divulge in conjunction with application and attendance at an educational institution

FERPA was amended by congress to exempt from the definition of "education records" those records that are created by a law enforcement unit for a law enforcement purpose and maintained by that law enforcement unit, thus allowing educational agencies and institutions to disclose these records publicly without obtaining prior written consent. If a law enforcement unit of an institution creates a record for law enforcement purposes and provides a copy of that record to a dean, principal, or other school official for use in a disciplinary proceeding, that copy is an "educational record" subject to FERPA if is maintained by the dean, principal or other school official and not the law enforcement unit. The original document created and maintained by the law enforcement unit is not an education record and does not become an education record merely because it was shared with another component of the institution.

A "law enforcement unit" is any person or group of persons sworn or non-sworn designated by the institution to control conduct of persons on campus and to protect campus property. "Law enforcement records" include crime reports and incident reports. If a law enforcement record is created "exclusively" for non-law enforcement purpose it will not be considered a record of the law enforcement unit. If the law enforcement record is created for disciplinary purposes only, it is then considered to be an "educational record".

CALIFORNIA STATUTES

The general rule in California is the media has access to information relative to calls for service and incidents compiled by a campus police/security department. The legislature has enacted several laws protecting the rights of victims and witnesses in specific crimes and has protected the identity of juveniles. The media may also have access to accident and disaster areas. They may not, however have access to areas determined to be a "crime scene".

CALIFORNIA'S CAMPUS SECURITY AND CRIME AWARENESS STATUTES

Enacted in 1992 at sec. 67380 (a)(3) of the California Education Code, the California law applies to certain institutions "receiving public funds" and requires release within "two business days following the request" for information.

Education Code 67380

a) The governing board of each community college district, the Trustees of the California State University, the Board of Directors of the Hastings College of the Law, the Regents of the University of California, and the governing board of any postsecondary institution receiving public funds for student financial assistance shall do all of the following:
   (1) Require the appropriate officials at each campus within their respective jurisdictions to compile records of both of the following:
      (A) All occurrences reported to campus police, campus security personnel, or campus safety authorities of, and arrests for, crimes that are committed on campus and that involve violence, hate violence, theft or destruction of property, illegal drugs, or alcohol intoxication.
      (B) All occurrences of noncriminal acts of hate violence reported to, and for which a written report is prepared by, designated campus authorities.
   (2) Require any written record of a noncriminal act of hate violence to include, but not be limited to, the following:
      (A) A description of the act of hate violence.
      (B) Victim characteristics.
      (C) Offender characteristics, if known.

(3) Make the information concerning the crimes compiled pursuant to subparagraph (A) of paragraph (1) available within two business days following the request of any student or employee of, or applicant for admission to, any campus within their respective jurisdictions, or to the media, unless the information is the type of information exempt from disclosure pursuant to subdivision (f) of Section 6254 of the Government Code, in which case the information is not required to be disclosed. Notwithstanding paragraph (2) of subdivision (f) of Section 6254 of the Government Code, the name of a victim of any crime defined by Section 261, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code shall not be disclosed without the permission of the victim, or the victim's parent or guardian if the victim is a minor.

For purposes of this paragraph and subparagraph (A) of paragraph (1), the campus police, campus security personnel, and campus safety authorities described subparagraph (A) of paragraph (1) shall be included within the meaning of "state or local police agency" and "state and local law enforcement agency," as those terms are used in subdivision (f) of Section 6254 of the Government Code.

(4) Require the appropriate officials at each campus within their respective jurisdictions to prepare, prominently post, and copy for distribution on request a campus safety plan that sets forth all of the following: the availability and location of security personnel, methods for summoning assistance of security personnel, any special safeguards that have been established for particular facilities or activities, any actions taken in the preceding 18 months to increase safety, and any changes in safety precautions expected to be made during the next 24 months. For the purposes of this section, posting and distribution may be accomplished by including relevant safety information in a student handbook or brochure that is made generally available to students.

(5) Require the appropriate officials at each campus within their respective jurisdictions to report information compiled pursuant to paragraph (1) relating to hate violence to the governing board, trustees, board of directors, or regents, as the case may be. The governing board, trustees, board of directors, or regents, as the case may be, shall, upon collection of that information from all of the campuses within their jurisdiction, transmit a report containing a compilation of that information to the California Postsecondary Education Commission no later than January 1 of each year, commencing January 1, 1993. The commission shall submit a report to the Legislature and the Governor on July 1, 1993, and every two years thereafter, on the type and number of incidents of hate violence occurring in institutions of public higher education in California. It is the intent of the Legislature that the governing board of each community college district, the Trustees of the California State University, the Board of Directors of the Hastings College of the Law, the Regents of the University of California, and the governing board of any postsecondary institution receiving public funds for student financial assistance establish guidelines for identifying and reporting occurrences of hate violence. It is the intent of the Legislature that the guidelines established by these institutions of higher education be as consistent with each other as possible. These guidelines shall be developed in consultation with the California Postsecondary Education Commission, the Department of Fair Employment and Housing, and the California Association of

Human Rights Organizations. The report shall include, but not be limited to, the following:

(A) A comparison of incidents occurring in the year being reported to previous years for which there is hate violence data.

(B) To the extent possible, a comparison of incidents of hate violence occurring at community colleges, the California State University, the Hastings College of the Law, the University of California, and postsecondary institutions receiving funds for student financial assistance with incidents occurring at colleges and universities in other states and private universities in California.

(C) Findings and recommendations to the Legislature on the means of addressing hate violence at community colleges, the California State University, the Hastings College of the Law, the University of California, and postsecondary institutions receiving public funds for student financial assistance.

(b) Any person who is refused information required to be made available pursuant to subparagraph (A) of paragraph (1) of subdivision (a) may maintain a civil action for damages against any institution that refuses to provide the information, and the court shall award that person an amount not to exceed one thousand dollars ($1,000) if the court finds that the institution refused to provide the information.

(c) For purposes of this section, "hate violence" means any act of physical intimidation or physical harassment, physical force or physical violence, or the threat of physical force or physical violence, that is directed against any person or group of persons, or the property of any person or group of persons because of the ethnicity, race, national origin, religion, sex, sexual orientation, disability, or political or religious beliefs of that person or group.

(d) This section does not apply to the governing board of any private postsecondary institution receiving funds for student financial assistance with a full-time enrollment of less than 1,000 students.

(e) This section shall apply to a campus of one of the public postsecondary educational systems identified in subdivision (a) only if that campus has a full-time equivalent enrollment of more than 1,000 students.

(f) Notwithstanding any other provision of this section, this section shall not apply to the California Community Colleges unless and until the Legislature makes funds available to the California Community Colleges for the purposes of this section.

Education Code 67385

(a) The governing board of each community college district, the Trustees of the California State University, the Board of Directors of the Hastings College of the Law, and the Regents of the University of California shall each adopt, and implement at each of their respective campuses or other facilities, a written procedure or protocols to ensure, to the fullest extent possible, that students, faculty, and staff who are victims of sexual assault committed at or upon the grounds of, or upon off-campus grounds or facilities maintained by the institution, or upon grounds or facilities maintained by affiliated student organizations, shall receive treatment and information. If appropriate

on-campus treatment facilities are unavailable, the written procedure on protocols may provide for referrals to local community treatment centers.

(b) The written procedures or protocols adopted pursuant to subdivision (a) shall contain at least the following information:

(1) The college policy regarding sexual assault on campus.

(2) Personnel on campus who should be notified, and procedures for notification, with the consent of the victim.

(3) Legal reporting requirements, and procedures for fulfilling them.

(4) Services available to victims, and personnel responsible for providing these services, such as the person assigned to transport the victim to the hospital, to refer the victim to a counseling center, and to notify the police, with the victim's concurrence.

(5) A description of campus resources available to victims, as well as appropriate off-campus services.

(6) Procedures for ongoing case management, including procedures for keeping the victim informed of the status of any student disciplinary proceedings in connection with the sexual assault, and the results of any disciplinary action or appeal, and helping the victim deal with academic difficulties that may arise because of the victimization and its impact.

(7) Procedures for guaranteeing confidentiality and appropriately handling requests for information from the press, concerned students, and parents.

(8) Each victim of sexual assault should receive information about the existence of at least the following options: criminal prosecutions, civil prosecutions, the disciplinary process through the college, the availability of mediation, alternative housing assignments, and academic assistance alternatives.

(c) Each segment of higher education shall implement this chapter from existing funds and resources available to it.

(d) For the purposes of this section, "sexual assault" includes, but is not limited to, rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or threat of sexual assault.

PUBLIC RECORDS ACT

The texts of statutes relating to campus police/security records security in found below.

Government Code 6250. In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.

Government Code 6251. This chapter shall be known and may be cited as the California Public Records Act.

Government Code 6252. As used in this chapter:

(a) "State agency" means every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(b) "Local agency" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or nonprofit organizations of local governmental agencies and officials which are supported solely by public funds.

(c)"Person" includes any natural person, corporation, partnership, limited liability company, firm, or association.

(d) "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

(e) "Writing" means handwriting, typewriting, printing, Photostatting, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.

(f) "Member of the public" means any person, except a member, agent, officer, or employee of a federal, state, or local agency acting within the scope of his or her membership, agency, office, or employment.

Government Code 6253. (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided.
Every agency may adopt regulations stating the procedures to be followed when making its records available in accordance with this section.
(b) Guidelines and regulations adopted pursuant to this section shall be consistent with all other sections of this chapter and shall reflect the intention of the Legislature to make the records accessible to the public. The guidelines and regulations adopted pursuant to this section shall not operate to limit the hours public records are open for inspection as prescribed in subdivision (a).

Government Code 6253.1. Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself which allow greater access to records than prescribed by the minimum standards set forth in this chapter.

Government Code 6254. Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:
(f) (1) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 220, 261, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 220, 261, 262, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be deleted at the request of the victim, or the victim' s parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.
(3) Subject to the restrictions of Section 841.5 of the Penal Code and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code, except that the address of the victim of any crime defined by Section 220, 261, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code shall remain confidential. Address information obtained pursuant to this paragraph shall not be used directly or indirectly to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty to employees.

RELEASE OF CRIMINAL HISTORY INFORMATION

Labor Code 432.7. (a) No employer, whether a public agency or private individual or corporation, shall ask an applicant for employment to disclose, through any written form or verbally, information concerning an arrest or detention that did not result in conviction, or information concerning a referral to, and participation in, any pretrial or posttrial diversion program, nor shall any employer seek from any source whatsoever, or utilize, as a factor in determining any condition of employment including hiring, promotion, termination, or any apprenticeship training program or any other training program leading to employment, any record of arrest or detention that did not result in conviction, or any record regarding a referral to, and participation in, any pretrial or posttrial diversion program. As used in this section, a conviction shall include a plea, verdict, or finding of guilt regardless of whether sentence is imposed by the court. Nothing in this section shall prevent an employer from asking an employee or applicant for employment about an arrest for which the employee or applicant is out on bail or on his or her own recognizance pending trial.

(b) Nothing in this section shall prohibit the disclosure of the information authorized for release under Sections 13203 and 13300 of the Penal Code, to a government agency employing a peace officer However, the employer shall not determine any condition of

employment other than paid administrative leave based solely on an arrest report. The information contained in an arrest report may be used as the starting point for an independent, internal investigation of a
peace officer in accordance with Chapter 9.7 (commencing with Section 3300) of Division 4 of Title 1 of the Government Code.
(c) In any case where a person violates this section, or Article 6 (commencing with Section 11140) of Chapter 1 of Title 1 of Part 4 of the Penal Code, the applicant may bring an action to recover from that person actual damages or two hundred dollars ($200), whichever is greater, plus costs, and reasonable attorney's fees. An intentional violation of this section shall entitle the applicant to treble actual damages, or five hundred dollars ($500), whichever is greater, plus costs, and reasonable attorney's fees. An intentional violation of this section is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500).
(d) The remedies under this section shall be in addition to and not in derogation of all other rights and remedies that an applicant may have under any other law.
(e) Persons seeking employment or persons already employed as peace officers or persons seeking employment for positions in the Department of Justice or other criminal justice agencies as defined in Section 13101 of the Penal Code are not covered by this section.
g) (1) No peace officer or employee of a law enforcement agency with access to criminal offender record information maintained by a local law enforcement criminal justice agency shall knowingly disclose, with intent to affect a person's employment, any information contained therein pertaining to an arrest or detention or proceeding that did not result in a conviction, including information pertaining to a referral to, and participation in, any pretrial or posttrial diversion program, to any person not authorized by law to receive that information.
(2) No other person authorized by law to receive criminal offender record information maintained by a local law enforcement criminal justice agency shall knowingly disclose any information received therefrom pertaining to an arrest or detention or proceeding that did not result in a conviction, including information pertaining to a referral to, and participation in, any pretrial or posttrial diversion program, to any person not authorized by law to receive that information.
(3) No person, except those specifically referred to in Section 1070 of the Evidence Code, who knowing he or she is not authorized by law to receive or possess criminal justice records information maintained by a local law enforcement criminal justice agency, pertaining to an arrest or other proceeding that did not result in a conviction, including information pertaining to a referral to, and participation in, any pretrial or posttrial diversion program, shall
receive or possess that information.
(h) "A person authorized by law to receive that information," for purposes of this section, means any person or public agency authorized by a court, statute, or decisional law to receive information contained in criminal offender records maintained by a local law enforcement criminal justice agency, and includes, but is not limited to, those persons set forth in Section 11105 of the Penal Code, and any person employed by a law enforcement criminal justice agency who is required by that employment to receive, analyze, or process criminal offender record information.
(i) Nothing in this section shall require the Department of Justice to remove entries relating to an arrest or detention not resulting in conviction from summary criminal history records forwarded to an employer pursuant to law.

(j) As used in this section, "pretrial or posttrial diversion program" means any program under Chapter 2.5 (commencing with Section 1000) or Chapter 2.7 (commencing with Section 1001) of Title 6 of Part 2 of the Penal Code, Section 13201 or 13352.5 of the Vehicle Code, or any other program expressly authorized and described by statute as a diversion program.

Labor Code 433. Any person violating this article is guilty of a misdemeanor.

RELEASE OF VICTIM INFORMATION

Penal Code 841.5. (a) Except as otherwise required by Chapter 10 (commencing with Section 1054) of Title 7, or by the United States Constitution or the California Constitution, no law enforcement officer or employee of a law enforcement agency shall disclose to any arrested person, or to any person who may be a defendant in a criminal action, the address or telephone number of any person who is a victim or witness in the alleged offense.

(b) Nothing in this section shall impair or interfere with the right of a defendant to obtain information necessary for the preparation of his or her defense through the discovery process.
(c) Nothing in this section shall impair or interfere with the right of an attorney to obtain the address or telephone number of any person who is a victim of, or a witness to, an alleged offense where a client of that attorney has been arrested for, or may be a defendant in, a criminal action related to the alleged offense.
(d) Nothing in this section shall preclude a law enforcement agency from releasing the entire contents of an accident report as required by Section 20012 of the Vehicle Code.

MEDIA ACCESS TO INCIDENTS

Members of the press may have access to areas closed to the public due to disaster.

Penal Code 409.5. (a) Whenever a menace to the public health or safety is created by a calamity including a flood, storm, fire, earthquake, explosion, accident, or other disaster, officers of the Department of the California Highway Patrol, police departments, marshal's office or sheriff's office, any officer or employee of the Department of Forestry and Fire Protection designated a peace officer by subdivision (g) of Section 830.2, any officer or employee of the Department of Parks and Recreation designated a peace officer by subdivision (f) of Section 830.2, any officer or employee of the Department of Fish and Game designated a peace officer under subdivision (e) of Section 830.2, and any publicly employed full-time lifeguard or publicly employed full-time marine safety officer while acting in a supervisory position in the performance of his or her official duties, may close the area where the menace exists for the duration thereof by means of ropes, markers, or guards to any and all persons not authorized by the lifeguard or officer to enter or remain within the enclosed area. If the calamity creates an immediate menace to the public health, the local health officer may close the area where the menace exists pursuant to the conditions set forth in this section.

(b) Officers of the Department of the California Highway Patrol, police departments, marshal's office or sheriff's office, officers of the Department of Fish and Game designated as peace officers by subdivision (e) of Section 830.2, or officers of the Department of Forestry and Fire Protection designated as peace officers by subdivision (g) of Section 830.2 may close the immediate area surrounding any emergency field command post or any other command post activated for the purpose of abating any calamity enumerated in this section or any riot or other civil disturbance to any and all unauthorized persons pursuant to the conditions set forth in this section whether or not the field command post or other command post is located near to the actual calamity or riot or other civil disturbance.

© Any unauthorized person who willfully and knowingly enters an area closed pursuant to subdivision (a) or (b) and who willfully remains within the area after receiving notice to evacuate or leave shall be guilty of a misdemeanor.

(d) Nothing in this section shall prevent a duly authorized representative of any news service, newspaper, or radio or television station or network from entering the areas closed pursuant to this section.

Penal Code 409.6. (a) Whenever a menace to the public health or safety is created by an avalanche, officers of the Department of the California Highway Patrol, police departments, or sheriff's offices, any officer or employee of the Department of Forestry and Fire Protection designated a peace officer by subdivision (g) of Section 830.2, and any officer or employee of the Department of Parks and Recreation designated a peace officer by subdivision (f) of Section 830.2, may close the area where the menace exists for the duration thereof by means of ropes, markers, or guards to any and all persons not authorized by that officer to enter or remain within the closed area. If an avalanche creates an immediate menace to the public health, the local health officer may close the area where the menace exists pursuant to the conditions which are set forth above in this section.

(b) Officers of the Department of the California Highway Patrol, police departments, or sheriff's offices, or officers of the Department of Forestry and Fire Protection designated as peace officers by subdivision (g) of Section 830.2, may close the immediate area surrounding any emergency field command post or any other command post activated for the purpose of abating hazardous conditions created by an avalanche to any and all unauthorized persons pursuant to the conditions which are set forth in this section whether or not that field command post or other command post is located near the avalanche.

(c) Any unauthorized person who willfully and knowingly enters an area closed pursuant to subdivision (a) or (b) and who willfully remains within that area, or any unauthorized person who willfully remains within an area closed pursuant to subdivision (a) or (b), after receiving notice to evacuate or leave from a peace officer named in subdivision (a) or (b), shall be guilty of a misdemeanor. If necessary, a peace officer named in subdivision (a) or (b) may use reasonable force to remove from the closed area any unauthorized person who willfully remains within that area after receiving notice to evacuate or leave.

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(d) Nothing in this section shall prevent a duly authorized representative of any news service, newspaper, or radio or television station or network from entering the areas closed pursuant to this section.

MEDIA ACCESS TO STUDENTS AND STAFF ON CAMPUS

May school administrators require members of the news media to (1) register their presence on campus, (2) comply with other conditions for interviewing students, observing an event or examining the curriculum being taught, and (3) leave the premises if their presence would interfere with the peaceful conduct of the activities of the school?

A public college or university would have difficulty in limiting access to the campus to the media during normal business hours. Most campuses are open with few barriers to the public and therefore the members of the media would have to interfering with the instructional process to be considered a trespasser pursuant to Penal Code 626 or 602. If the media enters a classroom then the likelihood of their presence interfering with the orderly process of instructional activities is greater. The trespass statutes could be invoked.

The California Attorney General rendered an opinion (A.G. Op 95-509) regarding the media's presence on a K-12 campus. The Attorney General concluded that school administrators may require members of the news media to follow reasonable conditions while they are on school grounds in order to prevent interference with the orderly educational activities of the school. These conditions may restrict the news media representatives in the same manner that access by members of the general public may be limited, i.e. requiring registration (Penal Code 627), accompaniment by a staff member while on school grounds, and denial of permission to enter classes that are in session. Members of the news media, as well as members of the general public, may be asked to leave if it reasonably appears to school officials that such persons are committing acts likely to interfere with the peaceful conduct of the school's educational activities (Penal Code 626.6, Education Code 32211).

RELEASE OF CAMPUS INFORMATION TO THE STUDENT PRESS

The landmark case for disclosure of campus police/security records was BAUER v. KINCAID decided March 31, 1991. Traci Bauer, a University of Southwest Missouri student and editor of the campus newspaper brought an action against Paul Kincaid, the campus security chief seeking access to criminal investigation and incident reports maintained by the campus security department. The campus held that FERPA exempted them from Missouri's equivalent of the California Public Records Act (Government Code 6254), FERPA prevented disclosure of campus police/security incidents, the SMSU Safety Security and Safety Department was not a commissioned police department and therefore records collected by them were not subject to disclosure.

The court ruled in favor of Bauer stating" An individuals enrollment at a state university should not entitle him or her to a greater privacy rights than members of the general public when the privacy interest relates to criminal investigation and incident reports.

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Nor could the federal government have reasonably intended to make university students a specifically protected class of criminal suspects. This court concludes that records sought by plaintiff are not educational records the release of which could result in a loss of federal funding under FERPA.

CONCLUSION

The courts and the Department of Education has clearly identified the difference between "educational" records and "law enforcement" records. FERPA prevents the release of a student's educational record beyond "directory" information.. FERPA also protects academic data generated while an individual is a student at an educational institution. Criminal investigation and incident reports are not the same type of records which the Act expressly protects.

Criminal investigation reports are specifically excluded from educational records which FERPA protects. Criminal investigation and incident reports do not contain the same type of information which a student is required to submit as a precondition to enrollment or attendance, nor is this type of information crested in the natural course of an individual's status as a student.

Campus law enforcement and security officials must realize that the press is entitled incident reports except as otherwise exempted by law. Police and security officials cannot exercise complete discretion in determining what records to release. As the court stated in a previous case," Law has reached its finest moments when it has freed man from the unlimited discretion of some ruler, some civil or military official or some bureaucrat. Where discretion is absolute, man has always suffered." (United States v. Wunderlich, 342 U.S. 98 (1951)).

CALIFORNIA LAW REGARDING RELEASE OF CAMPUS INFORMATION TO THE MEDIA

SHALL RELEASE

GENERAL INFORMATION
(GOVERNMENT CODE 6254)

1. The time, substance and location of all complaints or requests for assistance
2. The time and nature of the response
3. The name and age of the victim
4. The factual circumstances surrounding the incident
5. The general description of any injuries, property or weapons involved
6. Names, and address, occupation, complete physical description, date of birth of persons arrested including booking location, amount of bail, all charges against the person, location of the arrest and the factual circumstances surrounding the arrest.

SHALL NOT RELEASE

INFORMATION THAT WOULD ENDANGER SAFETY OF THE INVESTIGATION
(GOVERNMENT CODE 6254)

Information regarding an incident that would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation.

VICTIM OR WITNESS INFORMATION
(Penal Code 841.5)

No law enforcement officer or law enforcement agency shall release to any arrested person or any defendant in a criminal action the address or telephone number of any person who is a victim or witness in an alleged offense.

INFORMATION RELATING TO JUVENILES
(WELFARE AND INSTITUTIONS CODE 827)

The names of persons under 18 years of age. The juvenile court has discretion whether to grant press access to juvenile records. Once the press has received the information concerning juveniles, it cannot be restrained from reporting it. (In re Keisha T. App. 3 Dist. 1995, 44 Cal. Rptr. 2nd. 822)

IDENTITY OF PERSONS REPORTING CHILD ABUSE
(PENAL CODE 11167 (d))

The identity of all persons who are mandated to report child abuse shall be confidential and disclosed only between child protective agencies or to prosecuting or defense attorneys involved in the case.

MAY RELEASE

VICTIM INFORMATION WITH VICTIM'S PERMISSION
(GOVERNMENT CODE 6254)

Name and addresses of victims of the following crimes:

1. Sexual Assault (PC 220, 261, 262, 264,264.1, 286, 288, 288a, 289)
2. Child abuse (PC 273a,273d, 288
3. Spousal abuse (PC273.5)
4. Hate Crime (PC 422.6, 422.7, 422.75)
5. Stalking (PC 646.9)

PUBLIC SAFETY OFFICER UNDER INVESTIGATION WITH OFFICER'S PERMISSION
(GOVERNMENT CODE 3303 (E))

The employer shall not cause the public safety officer covered under the Public Safety Officer's Bill of Rights under interrogation for suspected violation of law or regulation to be subjected to visits by the press or news media without his or her express consent nor shall his or her home address or photograph be given to the press or news media without his or her express consent.

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REFERENCES

BAUER v. Kincaid, 759 F. Supp. 575 (1991)

California Attorney General Opinion 95-509 June 10, 1996
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Federal Register Vol. 60 No. 10 pp. 3464-3469 January 17, 1995